THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14554 OF 2006

ORDER:

This writ petition is filed seeking a declaration that the tender notice dated 7.6.2006, issued by the respondents-South Central Railway, dated 27.8.2005, as arbitrary and illegal.

Pursuant to the tender notice dated 2.12.2004 issued by the respondents, the petitioner being the highest bidder for Rs.50,25,168/- was awarded the earth work in making up/widening of existing formation with contractor earth to standard profile at Km 17/1-64/23 (UP), 64/0-72/12 (New dn Line) and Km 74/23-81/25 (New up Line) between Gudur-Renigunta stations, and accordingly, agreement dated 23.8.2005 was entered into between the 3rd respondent and the petitioner. While the work was in progress, the petitioner filed W.P.No.20429 of 2005 contending that the action of the respondents in recovering the seignorage charges contrary to the terms and conditions of the agreement was arbitrary and illegal. In the meanwhile, the respondents have deducted seignorage charges to the tune of Rs.9.00 lakhs. While the matter stood thus, the respondents issued notice of termination dated 21.3.2006, followed by notices dated 3.4.2006; 13.4.2006, 19.4.2006 and 24.4.2006, alleging that the petitioner failed to carry out the work as per schedule fixed under the agreement dated 23.8.2005. The petitioner submitted his reply stating that the work could not be executed due to deduction of huge amount from his bills to the tune of Rs.9.00 lakhs, and requesting the respondents not to take any coercive steps till W.P.No.20429 of 2005 is decided. However, by order dated 27.4.2006, the work in favour of the

petitioner was terminated and, immediately, thereafter, the respondents issued the impugned tender notice dated 7.6.2006 inviting tenders for the remaining unexecuted work, which was valued at Rs.28,84,948/-. Hence, this writ petition.

It is contended by the petitioner that since substantial portion of the work has been executed in spite of the fact that the respondents had illegally withheld a sum of Rs.9.00 lakhs, there is absolutely no justifiable reason in proposing to entrust the remaining work to a third party by inviting fresh tenders.

On behalf of the respondents, a counter-affidavit has been filed stating that, whereas the value of the work in question is Rs.50,25,168/-, the petitioner could execute the work to the value of Rs.19,81,548/-. The said amount was already paid to him duly deducting seignorage charges of Rs.8,96,537/-. The balance work was not executed by the petitioner in spite of several reminders. Even the term of the agreement, at the request of the petitioner, was extended from time to time up to 30.4.2006 by executing supplemental agreements. In spite of the same, the petitioner could not complete the work. In the circumstances, the contract was terminated on 27.4.2006 as per Clause 62 of the General conditions of the Contract. Consequently, the impugned tender notice was rightly issued inviting tenders for 12 various contract works, including the balance work from the petitioner. The termination of the contract was in accordance with Clause 62 of the General conditions of the Contract, which is binding on the petitioner. Hence, the interference by this Court is not warranted.

I have heard the learned counsel for both the parties.

From the facts narrated above, which are not in

dispute, it is clear that as per the agreement dated 23.8.2005, the petitioner is required to complete the work within four months. Admittedly, the work could not be completed within the time agreed upon in spite of the fact that extensions were granted by the respondents up to 30.4.2006. The material on record shows that the petitioner was served with notices dated 21.3.2006; 3.4.2006; 13.4.2006; 19.4.2006; and 24.4.2006, calling upon the petitioner to complete the work, failing which the agreement would be terminated. Ultimately, the contract was terminated on 27.4.2006 in terms of Clause 62 of the General conditions of the Contract. The said action of the respondents cannot be found fault with on any ground whatsoever. As a matter of fact, the order of termination was never challenged by the petitioner, but what is under challenge in the present writ petition is the consequential tender notice issued by the respondents inviting tenders for execution of the remaining work.

Though the learned counsel for the petitioner vehemently contended that the respondents are not entitled to deduct the seignorage charges, it is to be noted that though, initially, W.P.No.20429 of 2005 was decided in favour of the petitioner, subsequently, on an application made by the petitioner, the said order was recalled and the writ petition is reopened. The said writ petition is still pending and, admittedly, no interim order is granted restraining the respondents from recovering seignorage charges. Hence, the plea of the petitioner that the work could not be completed on account of the illegal deduction of seignorage charges from his bills cannot be accepted. In case the petitioner succeeds in W.P.No.20429 of 2005, it is always open to him to recover the amount to which he is entitled to. Since, as on today, there is no order restraining the respondents from recovering seignorage

charges, the action of the respondents cannot be said to be either arbitrary or illegal. Hence, the impugned action of the respondents, which does not suffer from any infirmity, warrants no interference by this Court.

Accordingly, the writ petition is dismissed. No costs.

23.1.2007.

Kgr.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14554 OF 2006

23rd January, 2007.

Between:

Ms. Sri Balaji Constructions, represented by its Managing Partner – K. Purandar Reddy. ..
Petitioner.

And

The Chief Administrative Officer (Contracts),
South Central Railway, Secunderabad and others.
..Respondents.